IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1249 OF 2005

New Industrial Security Agencies
Private Ltd. ... Petitioners.

Versus.

Naib Tahsildar & others. ... Respondents.

Ms.Shobha Gopal i/by M/s.Haresh Mehta & Co. for the petitioners.

Ms.Lata Desai for respondent 2.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED : 28th November, 2005.

P.C.:

1. Rule. Respondent 2 waive service. By consent of the parties, petition is taken up for hearing forthwith.

2. The petitioners have impugned in this petition the order dated 16th August 2004 passed by respondent 3 and the recovery certificate dated 17th September 2004 issued on the basis of the said order dated 16th August 2004. We have heard the learned counsel appearing for the parties.

3. Our attention is drawn to the order dated 26th April 2005 passed in Writ Petition No.2946 of 2004 by

the Division Bench of this Court. It appears that the Division Bench was dealing with the identical facts and similar communication dated 16th August 2004 was challenged in the said writ petition. It appears that since the impugned order dated 16th August 2005 was not a reasoned order, relying on the judgment of the Supreme Court in Mohindersingh Gill v/s. Chief Election Commissioner, New Delhi, AIR 1978 SC 851, the impugned order was set aside and the matter was remanded to respondent 3 to pass a fresh order after considering the representation made by the petitioner. Since in the present case also similar communication is under challenge, we see no reason why we should not follow order dated 26th April 2005 passed in Writ Petition No.2946 of 2004. We find that the communication in the instant case also does not contain any reasons.

4. The learned counsel appearing for the respondent 2 contended that the petitioners are in contempt and despite the orders passed by this court, they have not paid the amount. She also submitted that the contempt petition is pending. We find that even in Writ Petition No.2946 of 2004 also similar contention was raised. In fact in the affidavit filed by the Chairman of respondent 3 in paragraph 6, this grievance was raised. Obviously, therefore, after considering all these aspects, the Division Bench has remanded the matter. Hence we pass the same order.

5. Rule is made absolute in terms of prayer clauses (a) and (b). The matter is remanded to respondent 3 to decide afresh after giving an opportunity of hearing to the petitioner. Petition is disposed of. All the contentions of the parties are kept open.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)